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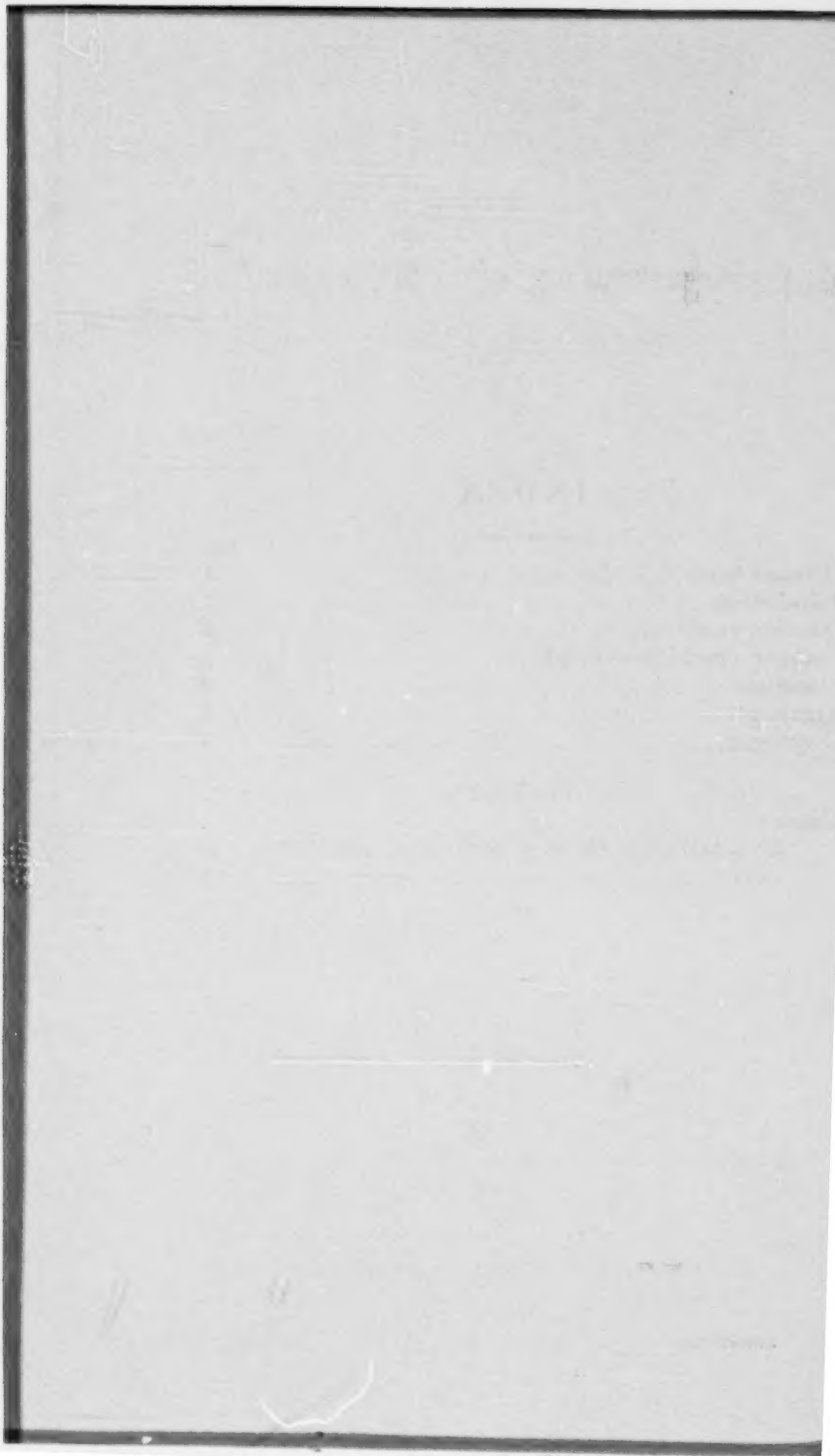

# In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 75

R. E. SHUTT, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINIONS BELOW

The oral opinion of the United States District Court for the Northern District of Texas (R. 110–112) is not reported. The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. App. 15–17) is reported at 218 F. 2d 10.

### JURISDICTION

The judgment of the court of appeals was entered on January 7, 1955. A petition for rehearing was denied on February 18, 1955. The petition for a writ of certiorari was filed on May

12, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

## QUESTION PRESENTED

Whether, in accordance with the terms of the contract between the United States and petitioner for the transportation of Government freight, the United States is entitled to recover the difference between the rates paid to petitioner and the lowest net rates available for the Government, based on the pertinent tariffs of other carriers, when petitioner had no tariff on file with the Interstate Commerce Commission and had no certificate to do business as a carrier in interstate commerce.

## CONTRACT PROVISION INVOLVED

The standard form Government voucher provides, in pertinent part, as follows (R. 94–95):

> I certify that the amount stated hereon, as evidenced by the attached sub-vouchers is correct and just, and that the services have been rendered as indicated, that payment therefor has not been received, and that the rates charged are not in excess of the lowest net rates available for the government, based on tariffs effective at the date of service.

## STATEMENT

From November 24, 1943, through August 27, 1944, petitioner, doing business as R. E. Shutt Motor Lines, transported Government property—

primarily aircraft engines—from Dallas, Texas, to air fields in Texas, Oklahoma, and Arkansas (R. 19–31, 55). Pursuant to Government vouchers signed by petitioner which certified that "the rates charged are not in excess of the lowest net rates available for the government, based on tariffs effective at the date of service" (R. 94–95), the United States paid to petitioner the sum of $10,342.64 (R. 55).

During this period, petitioner, doing business as R. E. Shutt Motor Lines, did not have a certificate from the Interstate Commerce Commission authorizing him to engage in the business of a motor carrier in interstate commerce (R. 94, 104, 111, 49), and did not have any tariff on file with the Commission (R. 94, 104, 49).

During the same period, petitioner was sole owner of Oil Field Service, Inc. (R. 86). This company had been authorized by the Interstate Commerce Commission to carry oil field equipment and contractors' outfits and supplies, including motors, over irregular routes in interstate commerce (R. 65–66, 82–83), and had filed tariffs covering this service (R. 83). Beginning in March 1944, Oil Field Service, Inc., was granted temporary authority by the Interstate Commerce Commission to transport airplane engines for the United States Government over irregular routes (R. 68–75). Seven of the shipments of airplane engines involved in this suit were made after the

effective date of this order, but all of these were made prior to the effective date of the tariff for hauling such engines (R. 108). An application by petitioner for the transfer of the certificate issued to Oil Field Service, Inc., to R. E. Shutt, doing business as R. E. Shutt Motor Lines (R. 86), was denied by the Commission on July 31, 1944 (R. 85).

The shipments involved in this suit were transported by the petitioner, doing business as R. E. Shutt Motor Lines, and not by Oil Field Service, Inc. (R. 48–50; Pltf. Ex. 1).

In this action, the United States seeks to recover the difference between the amounts paid to petitioner and the amounts payable at the lowest net rates available, based upon tariffs effective on the dates of the shipments (R. 34–36). According to the pertinent tariffs of other carriers, petitioner received overpayments in the sum of $4,354.43 (R. 52–58).

On these facts, the district court entered judgment for the United States for $4,354.43 (R. 41–42, 110–112). The court of appeals affirmed, holding that there was no "basis in law or in fact" for petitioner's contention that the evidence does not support the district court's finding that the rates charged were in excess of the lowest net rates available for the Government, based on tariffs effective at the date of service (Pet. App. 16).

## ARGUMENT

By the terms of his contract with the United States, petitioner agreed not to charge "in excess of the lowest net rates available for the government, based on tariffs effective at the date of service" (R. 94–95).[1] According to petitioner's own testimony, he did not have a certificate from the Interstate Commerce Commission to do business as R. E. Shutt Motor Lines (R. 94). Nor did he, either as R. E. Shutt Motor Lines or as Oil Field Service, Inc., have a tariff covering airplane engines on file with the Commission as of the date of any of the shipments involved in this case (R. 94, 104). In this posture, as held by the courts below, the United States was entitled to recover the difference between the amounts paid to petitioner and the amounts which would have been paid had petitioner charged rates not in excess of the lowest net rates available, based upon the pertinent tariffs of other motor carriers which transported like goods from and to the same points.

As we read the petition, petitioner's argument here is that the United States is not entitled to restitution in the absence of a finding by the

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[1] As noted in the Statement, *supra*, p. 3, petitioner so certified on the standard form Government vouchers he submitted for payment. The standard form voucher, together with the standard form bill-of-lading, form the contract of carriage. Cf. *Alcoa Steamship Co.* v. *United States*, 338 U. S. 421.

Interstate Commerce Commission that his rates were unreasonable. But this suit does not involve any question of the reasonableness of petitioner's rates. Petitioner's rates, contrary to his contract with the Government, were "in excess of the lowest net rates available for the government, based on tariffs effective at the date of service." Accordingly the United States is entitled to restitution to the extent of the overcharges.

## CONCLUSION

The decision below is correct and turns on the peculiar facts of this case. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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